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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,302	03/17/2004	Deborah Shelley	SHE	3037

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,302

Applicant(s)

SHELLEY, DEBORAH

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

DETAILED ACTION

Applicant's Amendment filed 4/28/06 has been entered and carefully considered. Claims 1 and 16 have been amended, however, limitations of amended claims have not been found to be patentable over prior art of record and newly discovered prior art, therefore claims 1-13, 16-18 are rejected under the new ground rejections as set forth below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-7 and 16, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Grenevitch et al (IDS cited reference U.S. Pat. # 5,662,129).

With regard to claim 1, Grenevitch et al discloses an eyebrow template (figs 1-4) comprising a saddle (46, fig. 2) that is shaped to be placed against the person's nose (col. 3, lines 1-3), a pair of guides (14, 16, fig. 1) each attached to the saddle and each having a guide opening (42, 44, fig. 3) for guiding application of makeup to the persons' eyebrows, the guides branching laterally (fig. 1) and the saddle branching downwardly and transversely to the guides (fig. 2 at 46). In regard to claim 2, Grenevitch et al further

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shows a pair of stems (see attachment A) each connecting a corresponding one of the guides to the saddle. In regard to claim 4, Grenevitch et al also shows the pair of stems having converging proximal sections and diverging distal sections (see attachment A). In regard to claim 5, the saddle being downwardly flared to have a larger opening width below (see fig. 2). In regard to claims 6-7, the guides being elongated loops (fig. 3) and wherein the loops each having a convex upper edge and a concave lower edge (see fig. 3). In regard to claim 16, Grenevitch et al discloses a method of employing a saddle branching upwardly toward a pair of templates (fig. 2) comprising the steps of placing the saddle against the person's nose (fig. 4) to branch upwardly between the eyes and placing the templates above the eyes (fig. 4), applying makeup to the person's eyebrows using the templates to guide makeup application (col. 3, lines 10-14). In regard to claim 18, Grenevitch et al also shows replacing the templates (14, 16) to change the style of the outlines of the templates (col. 3, lines 46-49).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-7, 9-10 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Rosenblatt (U.S. Publication # 2004/0231694).

With regard to claim 1, Rosenblatt discloses an eyebrow template (figs. 1-2) comprising a saddle (at 20) that is that is shaped to be placed against the person's nose (paragraph 13, lines 10-15), a pair of guides (16, 18) each attached to the saddle and

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each having a guide opening (26, 28) for guiding application of makeup to the persons' eyebrows, the guides branching laterally (fig. 1) and the saddle branching downwardly and transversely to the guides (fig. 2). In regard to claim 5, the saddle being downwardly flared to have a larger opening width below (see fig. 1). In regard to claims 6-7, the guides being elongated loops (fig. 1) and wherein the loops each having a convex upper edge and a concave lower edge (28a, 28b). In regard to claims 9-10, the guides being flexible (paragraph 22, lines 3-6) to curve around the person's forehead without altering the size of the guide openings. In regard to claim 16, Rosenblatt discloses a method of employing a saddle branching upwardly toward a pair of templates (fig. 2) comprising the steps of placing the saddle against the person's nose (fig. 2) to branch upwardly between the eyes and placing the templates above the eyes (fig. 2), applying makeup to the person's eyebrows using the templates to guide makeup application (paragraph 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 8 and 11-13, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grenevitch et al.

With regard to claims 3, 11-13, Grenevitch et al discloses an eyebrow template comprising all the claimed limitations as discussed above in claims 1 and 16 except for the loops being at most 2cm tall, the stems being made of flexible material that are different than the guides, the stems each having a plastic coated wire and each of the guides having a plastic coated piece of sheet metal. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the loops being at most 2cm tall, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the stems being made of flexible material that are different than the guides, the stems each having a plastic coated wire and each of the guides having a plastic coated piece of sheet metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claim 17, Grenevitch et al fails to show the step of flexing the stems to align the templates over the person's eyebrows. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the stems being made of flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, therefore, it would have been obvious to flex the stems to align the templates over the person's eyebrows.

Allowable Subject Matter

Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 19 is allowable over prior art of record.

Response to Arguments

Applicant's arguments with respect to claims 1 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hayashi and Kokuni are cited to show the state of the art with respect to an eyebrow template.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

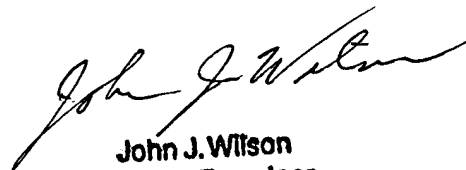
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Examiner
Art Unit 3732



John J. Wilson
Primary Examiner

Attachment A

Fig - 2

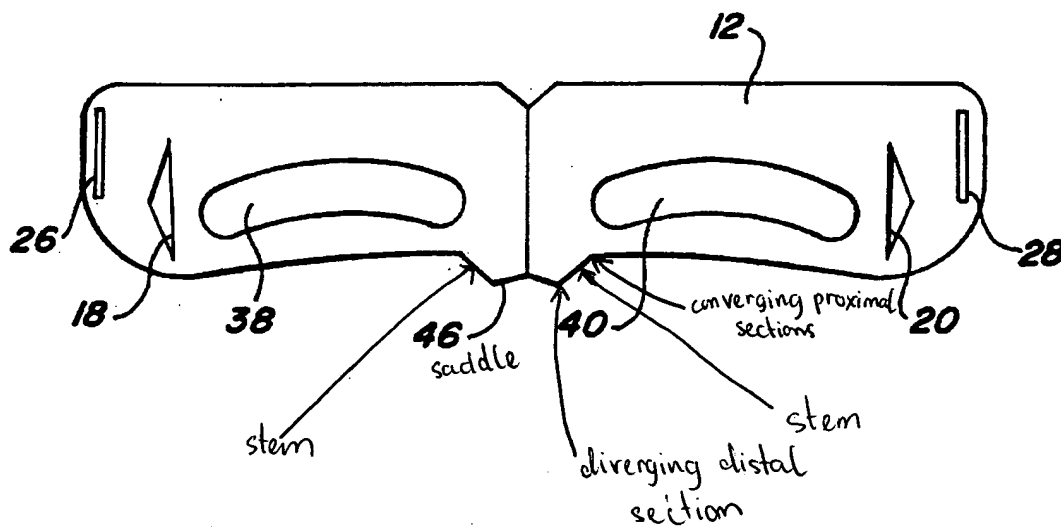


Fig - 3

